

U.S. BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE:		:	
Nicole Wilkins		:	Bankruptcy No.: 16-15547MDC
		:	
		:	Chapter 13
Nicole Wilkins		:	
2008 Kent Road		:	
Folcroft, PA 19032		:	
	Plaintiff	:	
	v.	:	
Bank of America, N.A.		:	
P.O. Box 31785		:	
Tampa, FL 33631-3785		:	
	Defendant	:	AP No.
		:	
		:	

**COMPLAINT TO DETERMINE VALIDITY OF LIEN HELD  
BY BANK OF AMERICA, N.A.**

**I. Introduction**

1. The instant complaint is filed by the Debtor-Plaintiff (hereinafter referred to as "Plaintiff") Nicole Wilkins pursuant to Bankruptcy Rule 7001 to determine the extent and validity of any lien asserted by Defendant, Bank of America, N.A. (hereinafter referred to as "Defendant") and pursuant to 11 U.S.C. § 506 to determine the extent to which Defendant pursuant to a second mortgage on the property more fully described below may file a secured claim and the extent to which it is an unsecured claim; to declare that any such claim that may be filed by the Defendant pursuant to the aforesaid mortgage is unsecured, per 11 U.S.C. § 506, and praying that the Honorable Court enter an order, directing the Defendant to void and/or vacate the second mortgage held by the Defendant upon the property of the Plaintiff, and to have such voidance or vacation recorded with the Recorder of Deeds, or as a satisfaction of mortgage.

## **II. Jurisdiction**

2. Debtor-Plaintiff, Nicole Wilkins, by and through her Counsel, Brad J. Sadek of Sadek Law Offices, LLC filed the present Chapter 13 case on August 4<sup>th</sup>, 2016. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§157 and 1334. This matter is a core proceedings pursuant to 28 U.S.C. §157.

## **III. Parties**

3. The Plaintiff is Nicole Wilkins, natural person, who resides at 2008 Kent Road, Folcroft, PA 19032.

4. The Defendant is Bank of America, N.A., having a primary office to conduct business at PO Box 31785, Tampa, FL 33631-3785.

5. The Trustee William C. Miller, Standing Chapter 13 Trustee for the United States Bankruptcy Court for the Eastern District of Pennsylvania, and Trustee in the Plaintiff-Debtor's Chapter 13 case.

## **IV. Allegations of Fact**

6. The Plaintiff incurred her first mortgage on the property known as and located at 2008 Kent Road, Folcroft, PA 19032 (hereinafter referred to as "the property") through Nationstar Mortgage, LLC.

7. The second mortgage on the property was granted in favor of Bank of America, N.A., on or about September 1, 2007.

8. As of the date of filing, the first mortgage with Nationstar Mortgage, LLC, had a current balance due and owing in the amount of \$103,648.61 in accordance with Proof of Claim numbered 11-1 filed in the Plaintiff-Debtor's Bankruptcy Case. See Proof of Claim 11-1 incorporated herein and marked as "**Exhibit "A."**"

9. As of the date of filing, Debtor's second mortgage through Defendant, and had a current balance due and owing in the amount of \$23,368.53 in accordance with Proof of Claim numbered 9-1 filed in the Plaintiff-Debtor's Bankruptcy Case. See Proof of Claim 9-1 incorporated herein and marked as "**Exhibit B.**"

10. The current value of the property is \$53,228.00 as evidenced by a fair market valuation. See fair market valuation incorporated herein and marked as "**Exhibit C.**"

11. Based on the aforementioned, Plaintiff avers that the property is worth less than the payoff amount of the first mortgage on the premises.

12. Therefore, the second mortgage held by the Defendant is therefore wholly unsecured.

13. Pursuant to 11 U.S.C. § 506, Plaintiff believes that the debt or obligation owed by the Plaintiff to the Defendant by virtue of the aforementioned second mortgage upon Debtor's real property should be reclassified by this Honorable Court as completely unsecured and any lien held by the Defendant against the property in question should be declared null and void.

WHEREFORE, Plaintiffs, by and through their counsel Brad J. Sadek, Esquire of Sadek Law Offices, LLC pray that this Court enter an Order in favor of the Plaintiffs and against Defendant, reclassifying any claim filed by the Defendant based upon the aforementioned second mortgage upon the premises, from secured to unsecured, striking or otherwise modifying any such Proof of Claim that is filed by the Defendant to show that the debt in question is wholly unsecured; and

ORDERING the Defendant to void or otherwise vacate the second mortgage on the premises of 2008 Kent Road, Folcroft, PA 19032 and have such voidance or vacation recorded with the Recorder of Deeds or in the alternative, mark said mortgage as

“satisfied” on the records of the Recorder of Deeds within thirty (30) days of the entry of the Order of Discharge of this Honorable Court, and to deliver same to counsel for Plaintiff, at no cost or charge for such cancellation and/or delivery; and

Granting such relief as the Court may determine to be proper and just.

Respectfully submitted,  
Sadek Law Offices, LLC

By: /s/ Brad J. Sadek, Esquire  
Brad J. Sadek, Esquire  
Attorney I.D. No. 90488  
1315 Walnut Street, #302  
Philadelphia, PA 19107  
T: 215-545-0008

Date: April 17, 2017

**VERIFICATION**

I, Brad J. Sadek, as attorney for Debtor-Plaintiff in the aforementioned matter, verify that the statements made in this Complaint are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904, relating to unsworn falsification to authorities.

Date: April 17, 2017

/s/ Brad J. Sadek, Esquire  
Brad J. Sadek, Esquire